

SHOULD WE RETHINK THE GOVERNANCE OF PLATFORMS IN ORDER TO CREATE A SYSTEM OF CHECKS AND BALANCES CONSISTENT WITH OUR DEMOCRATIC VALUES?

by

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Executive Summary

Digital platforms have become part and parcel of our everyday lives, becoming mediators of a perplexing amount of experiences and exchanges. As such, these platform policies have huge implications for not only our private usage, but our social lives and political debate. Currently, the power to determine the policies that impinge upon our digital lives is nearly exclusively concentrated in the hands of private actors and not bound to any democratic accountability. Instead, as private companies, platforms' decisions are guided by profit and not user well-being. Therefore, it is crucial that robust and democratic checks and balances be established to hold platform decision making and the power they hold over online sociality accountable.

Legislative approaches on both sides of the Atlantic are failing to address the full extent of platform power on citizens and users' everyday lives, on politics and society. The US focuses on social media platforms as companies offering isolated services and not as governing structures in their own right. The EU intervenes in platforms, however does not address crucial sources of power such as internal policy and platform design and disregards users' potential role in platform governance. There are, however, a multitude of other initiatives that seek to institute checks and balances for platform power, either inside the platform through oversight mechanisms or the direct involvement of users, or outside the platform through multi-stakeholder and civil society bodies.

We assess the levels of power decentralisation, democratic legitimacy and efficiency entailed in each of these proposals and make recommendations to EU regulators which get to the heart of platform governance. We argue that the concentration of platform power must be tackled more structurally by addressing not only content moderation but creating **a right to appeal platform design and policy decisions**. This should be mediated by a **European Open Council of Platform Governance** which ensures transparency of platforms and creates a space for debate. Checks and balances will be most effective if the EU simultaneously pushes for a **global platform governance body** and a **coordination mechanism** between government, civil society and platform accountability schemes. Finally, a further democratisation of platform power should be promoted by provisioning internal democratic accountability and decision-making. The EU can encourage the development of these initiatives by issuing a **code of conduct on crowdsourced**

governance and providing incentives for platforms to shift toward more democratic internal governance.

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Introduction

Online platforms such as Facebook or Google are regularly compared to government-like entities. Some even claim that they have become “private sovereigns” over populations of users who interact in algorithm-delineated territories (Cohen, 2019, 234-237). Mark Zuckerberg, Facebook’s CEO, acknowledged himself that Facebook was more often acting “like a government than a traditional company” (Klein, 2018).

From an economic perspective, online platforms can be defined as digital services that facilitate “interactions between two or more distinct but interdependent sets of users (whether firms or individuals) who interact through the service via the Internet” (OECD, 2019). They also often refer to the companies that deploy these services. Yet, such definitions are largely blind to power relations and the newly gained political significance of big platforms such as Google or Facebook. Drawing on the Internet Governance literature (DeNardis & Hackl, 2015; Gorwa, 2019), we define platforms as global and overwhelmingly private *policy hubs* that control digital services.

Platform decisions are not subject to the same rules, procedures, review and oversight processes that characterise policy-making in democratic governments. This is not to say that platforms are all-powerful; they are constrained by laws and standards, market dynamics, the material infrastructure of the internet, as well as (geo)political decisions as evidenced by the recent ban of Facebook in Russia (Scott, 2022). However, they have gained significant powers through their ability to curate and control information and speech, to frame social interactions, to shape digital markets and innovation, and to collect and monetise data and attention. These powers are highly concentrated in the hands of shareholders and sometimes just a few powerful individuals. As a result, platforms are prone to arbitrariness and self-interested decisions.

We argue that the *concentration of platform power* in private hands has become inconsistent with our liberal democratic values given the potential of these platforms to cause societal harms without democratic control. Therefore, there is a need to establish robust and democratic *checks and balances*, i.e., to empower democratically legitimate actors to prevent the actions of others on the

basis of democratic procedures and principles, so that platform power is shared among these actors and better serves people's interests.

As policy hubs of the digital, platforms govern large parts of the social world, yet they are also governed by various rules, norms and processes, which form what we call *platform governance*. Key questions in this brief are: which actors should be involved in the governance of platforms; how should they be involved; and what legitimises their involvement? According to Gorwa (2019), there are three main parties of platform governance: “platform companies (as architects of online environments), users (as individuals making decisions about their specific behaviour in an online environment), and governments (as the entities setting the overall ground rules for those interactions)”. We take a slightly different approach that integrates actors at two main levels of platform governance: inside the platform (e.g., users, the company, the code) and outside the platform (e.g., platforms, governments, civil society). This allows us to better address the complexity that arises from the multi-level and multi-actor nature of platform governance.

This brief also raises more practical questions for European regulators, in particular: what steps should the EU take to limit the concentration of platform power in the hands of private actors? In contrast to the US, which is often said to adopt a *laissez-faire* approach to platform governance, the EU is described as a form of “regulatory superpower” in the digital space (Hobbs, 2020). Although historically oscillating between self-regulation and state intervention, European countries have increasingly resorted to regulation to limit the non-liability and market dominance of platforms, heading towards what some have called “digital constitutionalism” (De Gregorio, 2021). Current regulatory acts can be described as instruments of governance but do not constitute a governance framework per se.

In this brief, we ask, not how platforms should behave, but under what rules, norms and processes their behaviour should be decided, that is: how platforms should be governed. This is a conceptual and a practical shift. We argue that the EU should seek to strike the right balance between the separation of platform power, democratic legitimacy and efficiency to establish a more robust and democratic framework of platform checks and balances.

The remainder of this brief is structured as follows: First, we elaborate on the emergence of platform governance as a major concern for regulators. Second, we develop an assessment framework that differentiates between two levels of platform governance (internal and external to the platform) and three components of a robust and democratic system of checks and balances: separation of powers, democratic legitimacy and efficacy/efficiency. Third, we discuss and assess five types of platform governance initiatives: at the outer level of platform governance, the EU's Digital Services Act (government intervention), Article 19's Social Media Councils (multistakeholder oversight) and the UN Internet Governance Forum (multi-stakeholder dialogue), and at the inner level of platform governance, Facebook Oversight Board (third party oversight) and Twitter's Birdwatch (crowdsourced moderation). Finally, we make several policy recommendations.

1. The state of the digital and the state of platforms: historical perspective

Online life, that platforms sustain, have called forwards a new domain, a new interface and thus a new social reality (Floridi, 2015), which, emerging from the specific liberties of the internet, allowed platforms to 'intervene' in everyday life (Gillespie, 2015) and specify the kind of sociality they intend to call forwards (van Dijck, 2013). Originally the exceptionality of the internet seemingly posed little threat to national governments (Wu, 2011). Instead, the nascent internet was characterised by a non-commercial, 'pragmatic liberalism' conducive to fast and bottom-up innovation (ibid.). Since then, the internet has demonstrated a vulnerability to commercial interests. Additionally, the internet has solidified itself as inherently social public, due to the salience of social platforms (Floridi, 2015; Porte & Narbona, 2021; Tufekci, 2012), which is comparable to a public utility (Pasquale, 2018, Moore and Tambini 2018). Indeed, platforms set and enforce rules governing content and speech regulation (Gillespie, 2018), with huge political implications, whilst casting themselves as technologically neutral (Gillespie, 2010). As such, the duty of government to contend with these developments coupled with the ability to hold platforms accountable has become more pressing throughout time, whilst the sovereignty of government over the digital was put into question (Floridi, 2020).

This trajectory has called forward different epitomising models of internet governance across time (Solum, 2008) which have warranted different levels of power to either governments or digital entities as well as different freedoms to innovate. These varying models of governance inevitably coincide in hybrid models due to the co-existence of the entities they bring into focus (networks, code, transnational institutions, governments, markets). An Internet in line with liberal values can only exist, when these entities are put in adequate relation to one another. As ideal types these models can similarly be applied to the de facto policy hubs that are platforms. Currently, market mechanisms are the main governance model of both the internet and platforms. As platforms call into being a new, central layer of online life, platform companies have concentrated proprietary control of these algorithmic environments (Cohen, 2019; Pasquale, 2018). Thus, commercial profit and corporate power have been centred in internet functioning.

i. Models of Internet Governance

Cyberspace as a spontaneous ordering was the initial dream and reality of the digital, which avoided government regulation due to its global reach and decentralised infrastructure. Now this spontaneous ordering is bounded and mediated to a large extent by platforms. Their global reach has since become a challenger for national regulation (e.g. Daskal, 2015). However this should not come with the risk of internet fragmentation (Mueller, 2017) and, by extension, to the detriment of the spontaneous ordering of cyberspace.

Transnationally operating institutions (ICANN and IETF) have been at the heart of internet governance, which focus on safeguarding the stability, reliability and interoperability of the internet, crucial for retaining the transnationality of the internet. While transnational platforms are dependent upon these institutions, they are ultimately arbitrators of online sociality.

Infrastructural approaches as the **rule of code** remain a central ideal type of internet governance, as code and infrastructure of the internet (TCP/IP) as ensured by transnational institutions, allow for the social constitution of the digital, i.e. the spontaneity of cyberspace. Thus, it signifies that values and interests (currently commercial) can be solidified in infrastructure at a higher level, that is, within the current platform economy, in platform design.

National Governments evidently want to bring this architecture, content and data policy (especially of platforms) under their jurisdiction and influence the political values that shape this infrastructure. This currently stands in contradiction to the internet infrastructure and the translational nature of global platforms, and nationally regulating content puts national jurisdictions in competition with one another denying each other sovereignty.

Market mechanisms equally constitute modes of Internet governance, as competition and pricing mechanisms drive the decisions of constitutive actors of the Internet. Moreover, they influence the constitution of digital infrastructure, the distribution of content and usage of data. Due to the high network effects and intellectual property regimes that platforms build upon, this model tends towards powerful commercial monopolies.

ii. **Digital constitutionalism as an alternative to digital (market) liberalism**

The shift from *digital liberalism* (as in market driven) to *digital constitutionalism*, occurred subsequently to the legal recognition that rights need to be enforced in digital spaces (*judicial activism*) (de Gregorio, 2021). Digital constitutionalism tackles the legitimation and exercise of power in the digital age by legally limiting the discretion of platforms over their policies. This shift was undertaken by the EU when they complimented the E-Commerce Directive (2000/31/EC) and the Data Protection Directive (95/46/EC) (both more constitutive of digital liberalism) with the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) and Digital Services Package (Digital Markets Act COM/2020/842 and Digital Services Act COM/2020/825). In direct contrast, digital liberalism is broadly epitomised by the US approach to the digital. Here, the assumption reigns that government influence on social order online is delimiting, as governance better emerges from market dynamics, conducting self-regulation and thus retaining the innovation and creativity of the digital.

1) **Digital Liberalism**

The US approach to regulating platforms remains premised in market dynamics most foundationally through section 230 of the Communications Decency Act of 1996 which relieves platforms of liability for transmitting third party content. As such, platforms are disbound from obligations, yet, as private entities they are able to set their own terms and conditions and regulate content nearly to their discretion. The Federal Trade Commission (FTC) is otherwise mainly responsible for intervening in platform actions, as they constitute private corporations in the market. The dominant framework of antitrust regulation has more recently been perpetuated in

President Biden's executive order on *Promoting Competition in the American Economy* (July 9th 2021).

This has foster profit-centred platform policy, premising profit over factuality and political diversity of content, well-being of users (Oxford Analytica, 2021) and inducing usages of data which infringe upon privacy concerns and national sovereignty (Solove, 2021, Zuboff, 2019). Platform power over architecture and data has also led to anti-competitive prices in commercial exchanges (Kahn, 2017, Pasquale, 2018). More recent legislation has considered 'breaking up' Big Tech as a method through which to prevent platform monopolies (Wu, 2018). In a similar vein, transparency has been considered as a mechanism ensuring accountability (Persily, 2021) through a subsequent self regulation and adjustment to consumer expectations. Ultimately as a 'market mechanism' governance approach, the US approach is premised on the self-regulation of platforms and limited government intervention. However, especially under current President Biden, this approach is shifting towards a regulatory governmental stance, that seeks to hold platforms accountable.

2) Digital constitutionalism

Recent developments in platform governance by the EU build explicitly upon the E-commerce Directive adopted in 2000 and complement the strong competition policy adopted by the EU commission and member state authorities by specifically targeting platforms in their new regulatory approaches. These are represented by the future Digital Services Act (DSA) (COM/2020/825) and Digital Markets Act (DMA) (COM/2020/842) and the current GDPR (Regulation (EU) 2016/679), focuses on giving rights to users and business users online, restraining and directing market behaviour as an outcome to be mediated, and forging coherence across legislation. It traces digital constitutionalism logic, limiting the power of platforms in favour of users' agency.

The GDPR seeks to empower users through adequate information in their data usage and legislates users' rights to their data, such as the "right to eraser" (building on the 1995 Data

Protection Directive and the previous recognition by the ECJ of the “right to be forgotten”). The DSA is an asymmetric regulation, based on the enhanced transparency and supervision of very large platforms to enforce heavier obligations and standards. It empowers users through internal mechanisms of redress and reporting and transparency requirements, and individualised policy options. It maintains a non-liability principle with regards to third party issued content despite the presence of moderation. The DMA tackles large platforms, and more specifically “gatekeepers”, by targeting their economic power, for example by imposing restrictions in combining data and requiring data-sharing with business users who generate that data. The enforcement for these regulations is either through the European Commission or adjacent institutions. It is thus a regulatory approach premised on government intervention imposing obligations and restrictions enforced through transparency requirements and fines, differing drastically in power and scope to the US approach.

3) Beyond digital liberalism and constitutionalism

The digital constitutionalist approach of the EU is one way of establishing checks and balances to platform power, but it is inherently limited by the fact that the largest platforms operating in the EU are controlled by US companies. This in turn means that knowledge asymmetries beyond transparency requirements might persist and that enforcement across competing jurisdictions may remain limited. Besides, the EU digital constitutionalist approach risks solidifying and formalising the power that platforms already hold, by enshrining in legislation the mitigation of the negative effects of platform activities at the expense of fully tackling the concentration of platform power. We assess in more detail the extent to which the EU’s approach manages to establish more robust and democratic platform checks and balances.

The digital liberal approach in the US implies that the state does not aim to get directly involved in platform policies, which means that it is ultimately for platform companies themselves to find ways of dealing with their negative effects. In the face of fierce criticisms on their political power, platforms strategically outsource some decision-making power. In opposing both platform power concentration and government overregulation, various civil society and multi-stakeholder initiatives are concomitantly emerging. This further leads to a multiplication of platform

governance initiatives at multiple levels. Thus, we assess key non-governmental platform governance initiatives, with the same criteria as the EU's approach, to highlight their complementarity and respective limitations.

2. Assessment framework: platform checks and balances

In this section, we elaborate on the different levels of platform governance and what we mean by a system of checks and balances in line with our democratic values at these different levels, by drawing on existing research in Internet governance and digital constitutionalism literature.

i) Two levels of platform governance

Several scholars have tried to assess the legitimacy of platform governance models. Suzor, Van Geelen, and Myers West (2018) have established an index that benchmarks legitimacy based on platform respect for fundamental values (e.g., freedom of expression) and procedural values (e.g., the rule of law). Gorwa (2019) has adopted a more holistic approach, investigating models of platform, as they relate to concerned actors other than users: self-regulation, government intervention and multi-stakeholderism. Haggart and Keller (2021) have developed criteria for assessing the democratic legitimacy of platform, government and civil society governance initiatives by scrutinising user inclusion. We build upon these approaches, complimenting them with a crucial distinction between the different layers of platform governance (internal and external to the platform). By doing so we also assess the complementarity of these different layers in dividing power and forging checks and balances.

In the following, we see the relationships between users, code and platform companies (including outsourced entities) as constitutive of the *inner level* of platform governance. The relationships between platforms, governments and civil society constitute the *outer level* of platform governance. Besides, we shift conceptually from an assessment of legitimacy to an assessment of checks and balances, which allows us to address more directly the identified problem, i.e., the high concentration of platform power in the hands of private actors.

ii) Three building blocks of checks and balances

We identify three main criteria to assess robust and democratic checks and balances - separation of powers, democratic legitimacy, and efficiency - which are developed below. Possible articulations of these criteria in the context of platform governance are also provided.

1) Separation of powers

As theorised by French philosopher of the Enlightenment Montesquieu in *The Spirit of the Laws* (1748), the separation of powers refers to the horizontal division of government into three main branches: the judicial, the legislative and the executive. Powers may also be shared vertically between different layers of government, for example between supranational institutions and member states in the EU.

To some extent, the separation of powers already applies to the private sector, e.g., horizontally between companies and governments, and vertically between shareholders and the board of directors, yet to a significantly lower level than within governments. As policy hubs, platforms make decisions that have a significant impact on the social order, while their global nature means that these decisions often elude government control. They should therefore be expected to reach a higher degree of power decentralisation than regular companies.

Effective checks and balances usually rely on a combination of vertical and horizontal separations of powers. In the context of platform governance, this means that some decisions should be taken outside the platform and others inside the platform, respectively by different actors. At both levels, the power to make these decisions should not be concentrated but shared between different actors. This in turn implies a certain level of independence of these actors.

2) Democratic legitimacy

In line with social contract theories, liberal democracies establish checks and balances that are informed by democratic legitimacy. Citizens participate in the decision-making process, either indirectly by electing representatives or directly, through referendums for example. The protection of fundamental freedoms and the separation of powers are enshrined within a constitution. The constitution, as well as the law, emanate from popular sovereignty.

In a capitalist economy, democratic legitimacy does not apply to the decision-making process within the private sector, although big companies are increasingly expected to adopt responsible practices. Platforms have harnessed the power of algorithms to become key regulatory actors,

echoing Lessig's (1999) famous argument that "code is law", but their private nature makes them largely unaccountable. The overwhelmingly private nature of platform companies also implies that decisions, both on platform design and content policies, are guided by business rather than democratic interests.

As policy hubs, platforms should be expected to reach a higher degree of democratic accountability and participation. In the context of platform governance, this first implies giving a direct and/or indirect voice to users in decisions made inside the platform, and involving citizens in decisions made outside the platform, for example through representation by their governments or participation in civil society organisations. It also means having rules and bodies to hold platforms democratically accountable.

3) Efficiency and efficacy

The risk of establishing too many checks and balances is that decision-making becomes ineffective and inefficient, ultimately doing more harm than good. Checks and balances should not prevent decision-making processes to efficiently reach the desired outcome. A lack of cooperation between the powers, i.e., a strict separation of powers, usually leads to slow and arduous decision-making. Similarly, high levels of democratic participation and accountability may lead to length and highly bureaucratic processes. Democratic legitimacy and the separation of powers should therefore be balanced with efficacy and efficiency.

In the context of platform governance, this implies achieving a certain level of cooperation between governments, civil society and platforms (i.e. a collaboration of powers), but also internally to the platform between the company and newly created checks and balances. It also requires the meaningful and timely performance of platforms in executing accountability and participatory mechanisms.

Inefficiency is usually not something that the private sector is accused of, yet platform business secrecy and the opacity of algorithms generate a high level of information asymmetry, which leads to both low democratic accountability and governance inefficiencies (Pasquale, 2015). The

efficiency and efficacy of accountability mechanisms thus also relies on the availability of information on platform activities.

3. Policy Options

i) Regulatory government intervention: the Digital Services Act of the EU

As the most advanced and comprehensive governmental regulatory framework towards approaching platforms autonomous governance, the Digital Services Act (DSA) (COM/2020/825) represents a distinct attempt to institutionalise digital constitutionalism within the framework of state governance. As such, it represents a distinctly external governance approach, which directly touches upon the business model and ecosystem that platform governance has been led by. Initially proposed by the European Union in December 2020, the latest draft was agreed upon on 22.04.2022. It foresees a variety of mechanisms and regulations through which to counter illegal content, goods and services, institute rights and power for users and civil society and formalise mechanisms through which to assess and neutralise the risk emerging from the concentration of platform power. Enforcement is foreseen by increasing the power of the responsible entity, the EU Commission, over online platforms. These mechanisms are mainly based on impositions of transparency requirements and obligations on platforms.

Separation of Powers

The DSA limits the power of platforms impinge upon platforms ability to make policy, execute policy and judge policies adequate application. From the perspective of the execution of policy, the DSA necessitates platforms to fit their algorithmic recommender systems to specific parameters as well as change their design so as to be clearer and more transparent for users (Articles 12). To ensure far application of platform policy DSA requires platforms to offer users a mechanism of internal redress (Article 18). External redress in an alternative dispute resolution body certified by a national Digital Services Coordinator is also guaranteed (Article 43). The DSA addresses the policy drafting internal arm of platform governance, by requiring that standard policy of internal platforms governance takes risk-assessments, regarding the infringement of fundamental rights and the distribution of illegal content adequately into account (Articles 26 and 33). This pre-emptive external approach to platform governance by a state institution reduces the

agency of the internal governance of platforms, thus successfully creating a system of checks and balances.

In taking this approach the Digital Services Act set requirements for platform governance across the board, rather than taking control of specific powers. As a result, internal platform governance, which falls outside of the direct scope of this legislative effort remains unregulated and legitimised. The DSA thereby neutralises the effects of platform power concentration rather than directly challenging it. This is most crucially noticeable in the lack of provision meaningfully addressing platform design for a broad range of issues across all kinds of platforms (Jaursch, 2019). Power over platform design is crucial for risk, e.g. of misinformation, and is near exclusively in the hands of platforms.

Democratic Legitimacy

The EU Digital Services Act, being a governmental legislative approach, profits highly from the democratic mandate it received to craft legislation in the interest of its citizens (neglecting discussions on the democratic deficit of the EU). Indeed, the legislation is very user-centred, nevertheless, in this context users often are viewed as passive occupants of the digital or as individual enforcement entities, enabling further compliance of platforms to regulation. Users are guaranteed transparency on content moderation decisions and simple procedures through which to contest these (Articles 12, 17, 18). Moreover, they are guaranteed the right to report illegal goods content and services. As such users take part in the governance of platforms, however complimenting its enforcement rather than influencing its constitution.

A similar logic applies to the transparency requirements for users regarding the monetisation of the data for targeted ads (Article 30). These requirements, vested in clear indications of data usage make users agentive through knowledge of the digital public sphere surrounding them. Whilst not a systemic approach, it premises user agency and thus warrants a certain level of democratic legitimacy. Systemic democratic legitimacy thus remains vested in the democratic legitimacy of the EU. Through evoking individualised mechanisms of redress and informed responses to platform policy, platforms are required to be responsive to users' wills. In being

individually based, this offers little scope for collective democratic legitimacy, which would entail potential of broader change on a platform level.

Efficiency – efficacy

The efficacy of the Digital Services Act hinges on the enforcement power of the Commission and the heavy transparency measures imposed on very large platforms (accessibility to internal analytics to researchers and yearly reports on automated processing and content moderation) (Articles 23, 24, 30). The Commission has both power and mandate to enforce transparency, thus limiting knowledge asymmetries (Articles 54, 57), as well as the fiat to impose fines on platforms in the case of non-compliance (Articles 58, 59). Furthermore, they have the power to investigate (Articles 51-54) and, in need, sanction, very large platforms. This is complemented by independent audits and investigations by National Coordinators of Digital Services, who equally have the power to sanction (Article 42, 42). Enforcement at an EU level is further enhanced, as the EU has more leverage in the face of transnational platforms than national states. The ideal in terms of efficacy remains global regulation. Efficacy is thus inherently vested in states' jurisdiction of their cyberspace and the regulatory oversight power of commissioned institutions. Even so, enforcement issues, whilst not yet tested, can be expected regarding the cumbersome detail of the DSA, which will be complex to enforce.

Discussion

Beyond limited enforcement, the DSA risks overregulating to the extent of imposing government arbitrariness, with negative implications for free speech (Ruscheimer, 2021). Moreover, as a constitutionalist approach, the DSA also risks solidifying platform power within this framework of governance, by legitimising action within the room for manoeuvre that platforms maintain e.g. regarding design. The involvement of the users is indicative of this approach, recentring the user as an object of protection and otherwise including them in governance solely on an individualised basis.

Certain of these drawbacks have been attempted to be mitigated by independent specialised bodies such as the Arcom in France, and Ofcom in the United Kingdom (Article 19, 2021). These could serve as independent oversight mechanisms, monitoring speech moderation, the deployment of algorithms, or content promotion, as a neutral arm of enforcement with privileged transparency access to platforms (G'sell, 2021). These institutions must however have a defined mandate and scope of decision making and influence. The shortcomings of Ofcom's mandate in light of the UK's Online Harms White Paper have led to high government discretion, tendencies towards surveillance and vague duties with serious implications for freedom of speech.

ii) Civic Society Initiatives: Social Media Council as proposed by Article 19

As an explicitly independent intervention towards targeting platforms control over content regulation and user redress, independent third-party councils (social media councils based in civic society) seek to establish a soft checks and balances with limited government intervention. It limits the power of platforms both in terms of rule-making and user redress mechanism, offering complimentary avenue for both ventures. Concretely Article 19 (2019, 2021b) proposes to establish national or global Social Media Councils (SMCs), as non-profit institutions, which allow for “a multi-stakeholder accountability mechanism for content moderation on social media” (Article 19, 2021b) applying to all social media platforms. SMCs would include representatives from relevant stakeholders from social media, media regulation, academia and civil society and would be independent of any social media platform. This council would review individual moderation decisions against international standards of fundamental rights, offer general guidance on content moderation practice, and provide a space where such recommendations can be discussed. The policy is premised on the voluntary commitment of platforms and not creating legal obligations. As such, once established, it is a form of co-governance (and co-learning, according to Article 19), which sits externally on the platform.

Separation of Powers

The separation of power is based on the independence of SMCs from government and social media companies alike, being built and owned collectively by the stakeholders. In concrete policy, a separation of power is warranted as SMCs offer an independent system of redress for users on content removal. SMCs also issue recommendations, which ought to be enforced by platforms. These recommendations are drafted in forums with all stakeholders and orientate themselves around international human rights standards. Moreover, the government plays a limited role in setting general objectives.

This limits the discretion of platforms over their community standards and content regulation. SMCs therefore foresee quite a broad division of power, nevertheless, the enforcement of decisions relies on the voluntary compliance and good faith of platforms. This limits the real effectiveness of this division as the main conduits for enforcement are very weak forms of sanctions, such as the issuing of apologies or public explanations and public pressures. Moreover, central conduits of governance of platforms, such as design, remain unaddressed.

Democratic Legitimacy

SMCs boast being open, democratic and transparent, however direct user-engagement remains limited to the independent system of redress. The right to appeal content moderation decisions after the system of redress within the platform has been exhausted, allows user voices to be heard and included, as emblematic cases to serve as precedents, and are operationalised to identify systemic issues in platform governance. The SMC also aims to be a deliberative forum to discuss regulatory frameworks (Tworek, 2019). Moreover, the board aims to be fully transparent (from funding to appointments) in annual transparency reporting, as well as representative in its choice of stakeholders (including civil society institutions that represent users) and social constitution (e.g., gender balance).

In being created by multiple stakeholders initiated by civil society institutions, and in consultation of the government, SMC allows for a very indirect form of democratic legitimacy, which is enhanced through independence and transparency guarantees, allowing for indirect user

engagement and active public pressure. This occurs in explicit concern for the effects of government intervention on free speech, thereby further indirectly centring the user.

Efficiency - efficacy

The collaborative potential of SMC to establish effective checks and balances is very high. Many stakeholders are representatively brought into productive conversation, allowing for a broad public consultation. This fosters trust between government, platforms and the public. Especially, in the process of solidifying more general principles on the application of human rights principles to content moderation, conversations between all the different stakeholders create long-lasting legitimacy and accountability. This would occur specifying the necessary technical and practical mechanism, which are essential for function, whilst necessarily staying outside of governments affordances.

Nevertheless, this could lead to mistrust or inefficiency either through conflicting interests, which cannot be mediated (such as between social media platforms and established media), or through attempts of certain stakeholders to establish influence over the SMC. The main hamper for efficacy remains the lack of enforcement guarantees.

Discussion

SMCs offer a systematic approach to governing content moderation and broader issues of platform governance, by preemptively making sure that platforms have sane community standards, catering to right to freedom of speech, and creating a deliberative space where systemic issues can be identified and tackled. As such, rather than being governed by the government, platforms are considered as regulators of speech and policy hubs in their own right, subject to the same standards of limited invention. By acknowledging the social role of platforms as well as the risks of government intervention, SMCs set the stage for regulating “lawful but harmful” content in a non-oppressive, yet rigorous manner (Doncquir, 2019). As an independent body issuing policy recommendations and decisions, SMC can rebuild trust between platforms,

government and the public. In this format they represent a crucial step towards independent, legitimate and accountable governance of platforms.

There are also drawbacks, which relate mainly to their precarious position as institutions. There is a trade-off between the independence of SMCs and specific interest that appointees of stakeholders may foster. Moreover, the weak enforcement mechanisms risk limiting any effectiveness of checks and balances. This could keep the commercial orientation of platforms as the status quo. This is further aggravated should a stakeholder seek to usurp the influence of the SMC or through a too dominant presence of advertisers as stakeholder in the council. These tendencies would be to the detriment of the trust and democratic legitimacy vested in the SMC.

iii) Multi-stakeholder governance and international institutions: Internet Governance Forum, UN

There is yet another form of external platform governance: multi-stakeholder international organisations. Global multi-stakeholderism has been very popular when dealing with Internet governance issues, in large parts because the transnational and private nature of the Internet has a tendency to elude government control. They are soft law mechanisms that aim to bring together different stakeholders (businesses, governments, civil society) so that their different interests are represented.

The Internet Governance Forum (IGF) was established by the United Nations in 2006, following the World Summits on the Information Society that took place in 2003 and 2005. It is now one of the world's largest multi-stakeholder platforms to discuss Internet governance issues. International organisations such as the IGF are rarely mentioned in discussions around platform governance, in part because they do not focus on platforms but on a much wider range of issues such as the digital divide or the fragmentation of the Internet. However, they are interesting attempts to establish global governance and should not be dismissed too quickly.

Separation of powers

The IGF's mandate is very broad. Paragraph 72 of the Tunis agenda (2005) indicates that the IGF should “discuss public policy issues related to key elements of Internet governance in order to foster the sustainability, robustness, security, stability and development of the Internet”, facilitating discourse and deliberations between stakeholders. The IGF does not vote on resolutions and does not issue binding texts, so its powers are very limited. Thus, as it stands, the IGF does not challenge the concentration of power in platforms hands. Conversely, the global institutional nature of the IGF has the potential to make it a powerful discursive platform for producing global general principles for the digital.

Democratic legitimacy

Multi-stakeholder governance is at the same time the most controversial aspect of the IGF, as multi-stakeholderism is predicated on the building of public-private partnerships rather than on the expression of democratic will (Gleckman, 2018). Representatives of democratically elected governments as well as some civil society members (mainly academics and members of nonprofit NGOs) are represented in the IGF. The constitution of the IGF is thereby exceedingly diverse, notably including many non-Western delegates, indirectly enhancing democratic legitimacy through global representativeness. Nevertheless, their interests are constantly balanced with those of private groups. The democratic legitimacy of the IGF is further compromised by the highly indirect representation of users through national delegates, and this is complemented with a meaningful consultative process. The IGF carries out a number of open consultations to decide on key issues for the agenda, but does not contribute to any accountability mechanism, merely providing a space for dialogue.

Efficiency - efficacy

The IGF is a hybrid organisation that encourages collaboration between stakeholders through flexible working processes. Its main institutions, like the Multi-stakeholder Advisory Group, must meet a certain proportion of governmental, business, academic and technical actors. In fact, the IGF “played a significant role in normalizing non-state actor participation in government-centric

systems” such as the UN (Epstein, 2013, 147). Yet, it is still infused with UN highly bureaucratic procedures, which contributes to slowing down deliberation processes. Another difficulty stems from the global nature of the forum which makes it difficult to link general principles to concrete governance situations at the local level. However, the ongoing development of a network of national and regional IGFs has the potential to connect issues at different geographical levels of governance.

Discussion

It appears that the current structure of the IGF is not ideal for building global platform checks and balances due to its limited power, significant democratic deficits, slow decision-making processes, but also lack of focus on platform governance. However, the creation of a global platform governance body should not be overlooked. Some propose to create completely different bodies. For example, Fray (2019) proposes to create a Digital Stability Board inspired by the Financial Stability Board, which was mandated by the G20 “to promote the reform of international financial regulation and supervision, with a role in standard setting and promoting members’ implementation of international standards”. Despite the democratic potential it entails, it is difficult to imagine a global platform governance body that would involve only governmental actors. Thus, we must learn from the shortcomings of the IGF regarding its powerlessness, there are indeed opportunities to build on the structures it has put in place.

iv) Platforms and affiliated semi-independent entity: Facebook Oversight Board

This policy option departs from the approach of digital liberalism, by introducing rule-based governance, which is guaranteed by independent oversight. Here, the terms of these arrangements are left to the platform discretion. The Facebook Oversight Board (FOB) (Oversight Board, 2021b; Rosen 2021) is emblematic of this approach, serving as an independent body of appeal in order to review decisions of content moderation, which is commissioned and charged with this responsibility by Facebook, now Meta. FOB independence is guaranteed financially through an independent trust, institutionally by a separate company (Klonick, 2019). Users report

to the FOB and are guaranteed a decision independent of Facebook. As an entity enforcing private policy, the FOBs enforcement is premised on the good faith of the platform. It is the last in a host of policies, aimed at making Facebook seem more accountable and transparent, in light of public pressure.

Separation of Powers

The FOB's main purpose is to serve as an independent body of appeal in order to review decisions of content moderation. Decisions on content moderation are appealed to the board, by users after they have exhausted Facebook's internal appeal process. The FOB then has the power to overturn decisions made internally to Facebook and is thereby binding. Moreover, the FOB can issue policy recommendations to Facebook, to which Facebook is required to respond within 30 days.

The level of separation of power ensured by the FOB remains therefore limited, and solely related to individual redress in particular cases. The power of the FOB to issue policy recommendations, remains an advisory role, thereby non-binding, and does not directly influence the internal private policy, design or underlying algorithms of Facebook. A further division of power, addressing the rule-making aspects of platforms, is not granted.

Democratic Legitimacy

User-inclusion in platform governance and claims democratic legitimacy remains limited for three main reasons. Firstly, the power of the oversight board emanates from a non-democratic actor (the platform, in this case Meta). Secondly, decisions are based on community guidelines, which are equally not democratically informed. And thirdly, the decisions of the oversight boards are made by non-elected members. Despite these shortcomings, certain avenues of democratic legitimacy exist.

The FOB's independent and transparent mechanism of redress can be invoked by users should their content be removed, or should they view harmful content and should they have exhausted

Facebook's appeal process. Cases are considered, if of significant public relevance. Accepted cases are assigned to a five members panel which includes a mixed gender representation and at least one member from the region concerned. They are assessed against Facebook's community standards and values and whether Facebook's decision violates human rights, such as freedom of expression, taking into account nuances of language, user intent and context. The panel also consults experts and public comments. The FOB thereby establishes democratic legitimacy through certain representativity of the board and the consultative and inclusive procedure (including user views) and the culturally specific application of community standards. The FOB also collects 'Public Comments' by third parties which "shape the board's thinking" and have the potential to inform policy recommendations.

Community standards are however decided upon by Facebook and there is no system of appeal through which to challenge other central policies. Moreover, these appeals to democratic legitimacy are limited by the FB original "relevance judgement" of cases to be heard. As such, the board allows for a very limited form of democratic legitimacy. It consists mainly of hearings during the appeal process but does not go beyond a consultative constitution. This allows for a certain form of transparency and accountability of Facebook, however does not centre the user enough to be considered democratically legitimate

Efficiency - efficacy

As was seen in the section above, the FOB seeks to include multiple voices into their judgements, mainly by virtue of the constitution of the decision-making panel, and the board, which must confirm the decision of the panel. Facebook must execute the decision of the FOB within 7 days and 90 days after the original submission. A public response to policy recommendations by the FOB is required by Facebook within 30 days. These timescales are short in comparison to judicial courts, yet long, considering the speed of social life online. A further limitation is evident in the proportion of cases genuinely considered by the panel. Of 339,325 cases submitted between 01.06.2021 and 30.09.2021 only 28 were shortlisted for consideration (Oversight Board, 2021a). On a more positive note, of the 25 policy recommendations made by the board, just over half were transposed either fully or partially into policy. As such, FOB's functioning as a system of checks

and balances can be less considered one of effective redress and compensation and more a deliberative process for the specification of policy.

Discussion

Beyond the points of concern outlined above, there is a danger that the FOB in its current constitution and proximity to constitutional metaphors, (often dubbed Facebook's supreme court (COWLS & Schramm, 2022)) risks solidifying platforms' power in their governance in a mere execution of community standards. This goes hand in hand with the fact that it grants platforms significant agency in crafting their own role discursively (Gillespie, 2010) and is a risk incurred by all agencies which have been instantiated by platforms. Indeed, in being unaccountable to policy recommendations platforms can retain a sheer, already documented (Haugen) profit orientation. Thus, systematic change remains uncatalyzed and issues beyond content moderation, such as design, remain untouched. Indeed, rather than being a counter power, the FOB resembles a guarantee of proper application of community standards. (G'sell, 2021).

On a more positive note, the warranted transparency can push platforms towards actions which are more in tune with the values of states and users. This is especially important considering the 'black box' nature of platforms which makes precise pre-emption of issues and external governance very difficult (Gorwa, 2019: 863). As the regulations of the FOB are mainly on content regulation, the existence of an independent body, oriented by human rights frameworks, also needs to be valued as ensuring that this content regulation is outside of the hands of potential government censorship (Kaye, 2018; Keller, 2018). This is an advantage also warranted by the institutionally similar SMCs.

v) Direct involvement of users and crowdsourced moderation: Birdwatch, Twitter

Another way of establishing checks and balances within platforms is to involve users directly in decision-making, for example in moderation activities. In January 2021, Twitter announced the launch of Birdwatch, a system allowing users to fact-check content containing false, erroneous or

de-contextualised information (Coleman, 2021). Facebook had also announced the launch of a similar system in 2019 but little has been communicated about it since then. This type of system aims to decentralise and speed up the moderation of content on platforms. It is based on a model of spontaneous moderation of content by communities of users, inspired by the Wikipedia model. Birdwatch is still in its pilot phase and only available in the United States, but already raising many questions.

Separation of powers

Birdwatch empowers users by allowing them to take an active part in moderating misinformation on Twitter. Users could already report content in violation of Twitter rules, for example Tweets sharing "synthetic, manipulated, or out-of-context media that may deceive or confuse people and lead to harm". But until now, the labelling of false information was solely undertaken by the company itself. Therefore, Birdwatch introduces a greater level of power-sharing between the company's fact-checkers, false information detection algorithms and users.

However, these initiatives are limited to the power of fact-checking. For other types of content, for example hate speech, users can only report, which means that they are not really involved in the decision making. Nor do these initiatives allow for shared power to determine content policies and design choices or the ordering of information. For example, contributions to Birdwatch will allow messages to be displayed below flagged Tweets but will have no impact on the recommendation system, and therefore no direct impact on their visibility. These powers remain concentrated in the algorithm and the company.

Democratic legitimacy

Birdwatch encourages the direct participation of users who can provide informative notes on Tweets they believe are misleading. The system allows various users to publish these notes on the Birdwatch website. It also encourages a form of accountability between users by allowing them to rate contributions as helpful or not. Ultimately, only the most useful contributions are made visible on Twitter below the relevant Tweets. It is therefore a collective moderation process

involving the active participation of users and encouraging democratic accountability in moderation.

However, as with the oversight board, the terms of this system were decided by Twitter and although participants are invited to give their feedback, the architecture of Birdwatch remains decided by the company. In addition, the direct involvement of users on a voluntary basis necessarily raises issues of representativeness. It is difficult to ensure that the demographic, linguistic or political characteristics of contributors are representative of the user base. In fact, a recent study shows that the political partisanship of Birdwatch contributors has an impact on the evaluation of misleading content (Allen, Martel & Rand, 2022). It is also likely that certain inequalities will appear, as on Wikipedia where contributors are overwhelmingly male, white and Western (Glott, Schmidt & Ghosh, 2010). Finally, there is a risk of manipulation by malicious actors wishing to hijack the system to discredit certain statements or to saturate the fact-checking system to allow the dissemination of false information, thereby undermining the objective of democratic legitimacy.

Efficiency- efficacy

Birdwatch is still in the testing phase and until recently, contributions were not visible on Twitter. But in early March 2022, Twitter announced that it was taking the experiment a step further and allowing a “small (and randomised) group of people on Twitter in the US” to “see Birdwatch notes directly on some Tweets” (Coleman, 2022).

One of the main advantages of Birdwatch, compared to professional fact-checking, is that it promises to be faster, yet no data is available on the speed of birdwatch’s fact-checking for now. Nonetheless, data is available on the effect of birdwatch’s fact-checking on readers since Twitter shared the results of a survey which found that 20-40% of people are “less likely to agree with the substance of a potentially misleading Tweet after reading a note about it, compared to those who saw a Tweet without a note” (Coleman, 2022). There is no data on the quality of fact-checking for now. But some studies show that crowd-sourced fact-checking has the potential to match professional fact-checkers and complement detection algorithms by taking better account of context (Allen et al, 2021), provided there are sufficient contributions.

Discussion

Although there is certainly potential for internal platform governance, the development of initiatives such as Birdwatch may prove more limited than expected because of the differing nature of platform interactions. In fact, most social media platforms generate interactions that are very different to those on Wikipedia, as Wikipedia's aim is to share information with large audiences. On Facebook for example, information is mainly shared with one's network, which does not always justify peer moderation activities. As a result, the Wikipedia model may not be transferable to other types of platforms.

Another major issue is the level of decision-making power given to users and thus their degree of involvement in internal governance. In 2009, Facebook offered users the opportunity to "review, comment and vote" on proposed changes to various platform policies (Meta, 2009). The initiative was not renewed after the first vote, apparently because the number of voters was too low (around 600,000 out of the 200 million users at the time). The result was not even binding because it did not exceed the 30% threshold of users set by Facebook. Some commentators pointed to the length of the texts submitted for voting, thus significantly increasing the cost of participation for users (Robertson, 2018). Thus, democratic participation within platforms has a cost. To be successful, it requires, among other things, the removal of as many barriers to user participation as possible and the provision of sufficient guarantees on the outcome of the vote.

4. Recommendations

Our recommendations are primarily addressed to the EU in a context of intense pro-activity to regulate digital services. At the same time, this brief has shown that there are many other platform governance initiatives, of varying effectivity, all of which allow, to a greater or lesser degree, to decentralise and democratise platform power. Our analysis of these options has indicated a need to adopt a co-governance approach at EU level, which maintains citizen's protection as in current legislation, whilst better taking into account the existing ecosystem of platform governance actors and their complementarity. Our recommendations, which are articulated around 3 main axes, are detailed below.

i) **Structurally** addressing platform power

At both the inner and outer level of platform governance, we have highlighted a lack of checks and balances of the most fundamental powers of platforms: their design and policy-making power. Important steps are being taken in the United States and the European Union to make platform activities and decisions **more transparent**. These efforts are crucial and must be pursued, but insufficient in our view to tackle structurally the concentration of platform power.

- a. We propose to establish governance principles for platform design and policy making. More specifically, we advocate in favour of a **right to appeal platform design and policy decisions**. This would allow citizens to challenge decisions that infringe upon human rights or cause significant societal harm, for example designs patterns that spread disinformation. In practice, citizens should be able to exercise this right within platforms, which implies that European regulators specifically require platforms to implement a redress mechanism for design and policy decisions. For this, they could draw on the provisions contained in Articles 17 and 18 of the Commission's proposed DSA.
- b. There is also a need to grasp the full potential of transparency requirements enshrined in the DSA by enabling citizen awareness and encouraging open debate on platform policies. More specifically, the Commission should create a **European Open Council on Platform Governance** which would bring together

representatives of online platforms, academics and civil society. They would be charged with creating and managing an open platform that would make information on platform policies accessible to citizens, open a space for debate and ultimately inform platform activities by suggesting policy and requiring a public response thereto.

ii) Pushing for **global** platform governance

Any attempt to establish checks and balances at the outer level of platform governance will inevitably have to deal with the global nature of platforms. In fact, the EU will always be limited in its regulatory efforts if it does not push for a global governance of platforms. Besides, the multiplication of platform, government and civil society initiatives may lead to overlaps, detrimental institutional competition and confusion for both users and citizens.

- a. The EU should make use of its normative power to push for the creation of a **global platform governance body**, responsible for establishing global principles of platform governance and promoting their implementation. This would be consistent with the EU's attempt to promote fundamental values globally in the digital space through regional and bilateral partnerships but further pushing in the direction of institutional reform at global level. This body could draw on existing structures, such as the Internet Governance Forum, to establish global principles, especially drawing on the network of national and regional IGFs to conduct consultations. However, it should then be given a narrower mandate (focusing specifically on platforms) and capacities to oversee and publish reports on the implementation of these principles.
- b. As a sub-entity of this global governance body, we propose establishing a **coordination mechanism** between government, civil society and platform redress and accountability schemes (e.g., national authorities such as the French ARCOM, multi-stakeholder initiatives like the Social Media Councils, independent platform bodies such as the Facebook Oversight Board). This mechanism should aim to organise the relationship between these different accountability bodies through

multi-stakeholder dialogue and to find ways of clarifying their respective roles and missions to facilitate the exercise of digital rights. This sets in motion a collaborative effort between platforms, civil society and government to overcome the complexity of the exercise of digital rights and the multiplication of accountability bodies.

iii) Promoting **democratic decision-making** within platforms

The de-concentration of platform power and the creation of accountability mechanisms may be insufficient to establish truly democratic checks and balances. However, the possibility of involving users directly in the platform's decision-making offers an opportunity to democratise platform power. It seems premature to adopt a strict regulatory approach to user governance, as we do not yet have a clear idea of how direct democracy on platforms can work. Nevertheless, we consider the following propositions to be mature.

- a. The EU can encourage the development of these initiatives by issuing a **code of conduct on crowdsourced governance**. First, the code should lay guidelines and a risk assessment framework for crowdsourced moderation based on input from experiments such as Twitter's Birdwatch. Second, it should provide guidelines on how to implement crowdsourced decision-making processes, that is user voting on platform policy and design decisions. In a way similar to the EU code of conduct on countering illegal hate speech online, it should rely on voluntary participation and regular evaluations of participants.
- b. Yet, in addition to voluntary codes of conduct, we also recommend the EU to reflect on possible incentives to encourage platforms to shift toward more democratic internal governance. This could be for example the threat of more stringent regulation, which speaks to Facebook's current approach to self-regulation. Or it could constitute monetary incentives, that reward the devolvement of power of platforms to users or outside entities. Here, rigours framework for the assessment of such devolvement of power must be in place.

Bibliography

Allen, J., Arechar, A. A., Pennycook, G., & Rand, D. G. (2021). Scaling up fact-checking using the wisdom of crowds. *Science Advances*, 7(36). <https://doi.org/10.1126/sciadv.abf4393>.

Allen, J., Martel, C., & Rand, D. (2022). Birds of a feather don't fact-check each other: Partisanship and the evaluation of news in Twitter's Birdwatch crowdsourced fact-checking program. In *CHI Conference on Human Factors in Computing Systems (CHI'22)*, April 29-May 5, 2022, New Orleans, LA, USA. ACM, New York, NY, USA, 25 pages. <https://doi.org/10.1145/3491102.3502040>.

Article 19 (2021b, July 6) UK: Draft Online Safety Bill poses serious risk to free expression. <https://www.article19.org/resources/uk-draft-online-safety-bill-poses-serious-risk-to-free-expression/>.

Article 19. (2019). The Social Media Councils: Consultation Paper. June. <https://www.article19.org/wp-content/uploads/2019/06/A19-SMC-Consultation-paper-2019.pdf>.

Article 19. (2021a). Social Media Councils: One piece in the puzzle of content moderation. October. <https://www.article19.org/social-media-councils/>.

Cohen, J., (2019). *Between truth and power: The legal constructions of informational capitalism*. Oxford University Press.

Coleman, K. (2021). Introducing Birdwatch, a community-based approach to misinformation. *Twitter Blog*. https://blog.twitter.com/en_us/topics/product/2021/introducing-birdwatch-a-community-based-approach-to-misinformation.

Coleman, K. (2022). Building a better Birdwatch. *Twitter Blog*. https://blog.twitter.com/en_us/topics/company/2022/building-a-better-birdwatch.

Cowls, J., & Schramm, M. (2022). Constitutional metaphors : Facebook ' s " supreme court " and the legitimization of platform governance. *New Media and Society*, 1–25. <https://doi.org/10.1177/14614448221085559>.

Daskal, J. (2015). The Un-Territoriality of Data. *The Yale Law Journal*, 215, 326–398.

De Gregorio, G. (2021). The rise of digital constitutionalism in the European Union. *International Journal of Constitutional Law*, 19(1), 41–70.

Docquir, P. F. (2019, October 28). The Social Media Council: Bringing Human Rights Standards to Content Moderation on Social Media. *Center for International Governance Innovation*. <https://www.cigionline.org/articles/social-media-council-bringing-human-rights-standards><https://www.cigionline.org/articles/social-media-council-bringing-human-rights-standards-content-moderation-social-media/content-moderation-social-media/>.

Epstein, D. (2013). The Making of Institutions of Information Governance: The Case of the Internet Governance Forum. *Journal of Information Technology*, 28(2), 137–149. <https://doi.org/10.1057/jit.2013.8>.

Fay, R. (2019). Digital Platforms Require a Global Governance Framework. Centre for International Governance Innovation. *Models for Platform Governance essay series*. <https://www.cigionline.org/articles/digital-platforms-require-global-governance-framework/>.

Floridi, L. (2020). The Fight for Digital Sovereignty: What It Is, and Why It Matters, Especially for the EU. *Philosophy and Technology*, 33(3), 369–378. <https://doi.org/10.1007/s13347-020-00423-6>.

G'ssell, F. (2021, May 6). Facebook et la Suspension de Trump: Le Facebook Oversight Board est-il au rendez-vous. *Blog de Florence G'ssell: Law and Beyond*. <https://gsell.tech/facebook-et-la-suspension-de-trump-le-facebook-oversight-board-est-il-au-rendez-vous/><https://gsell.tech/facebook-et-la-suspension-de-trump-le-facebook-oversight-board-est-il-au-rendez-vous/>.

G'ssell, F. (2021). Les Réseaux Sociaux, entre Encadrement et Auto-Regulation. *SciencesPo Chair Digital, Governance and Sovereignty*, April, 1–60.

Gillespie, T. (2010). The politics of “platforms.” *New Media and Society*, 12(3), 347–364. <https://doi.org/10.1177/1461444809342738>.

Gillespie, T. (2015). Platforms intervene. *Social Media+Society*, 1(1). doi:10.1177/2056305115580479.

Gillespie, T. (2018). *Custodians of the internet: Platforms, content moderation, and the hidden decisions that shape social media*. New Haven, CT: Yale University Press.

Gleckman, H. (2018). *Multistakeholder Governance and Democracy: A Global Challenge* (1st ed.). Routledge. <https://doi.org/10.4324/9781315144740>.

Glott, R., Schmidt, P., & Ghosh, R. (2010). Wikipedia Survey—Overview of Results. *Wikipedia Study*. UNU-MERIT. https://web.archive.org/web/20110728182835/http://www.wikipediastudy.org/docs/Wikipedia_Overview_15March2010-FINAL.pdf.

Gorwa, R. (2019). What is platform governance?. *Information, Communication & Society*, 22(6), 854-871. <https://doi.org/10.1080/1369118X.2019.1573914>.

Haggart, B., & Keller, C. I. (2021). Democratic legitimacy in global platform governance. *Telecommunications Policy*, 45(6). <https://doi.org/10.1016/j.telpol.2021.102152>.

Hobbs, C. (2020). Project note: In search of Europe's digital sovereignty. In: Hobbs, C. (ed). *Europe's digital sovereignty: From rulemaker to superpower in the age of US-China rivalry*. European Council on Foreign Relations. Essay Collection: European Power.

Jaursch, J. (2022). Strengthening EU Proposals on Deceptive Platform Design: Ideas on How to Improve the Draft Digital Services Act. *Stiftung Neue Verantwortung*, March.
 Kaye, D. (2018). A human rights approach to platform content regulation. *Report of the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*. <https://freedex.org/a-human-rights-approach-to-platform-content-regulation/>.

Keller, D. (2018, September 11). Don't force google to export other countries' laws. The New York Times. <https://www.nytimes.com/2018/09/10/opinion/google-right-forgotten.html>.

Khan, L. M. (2017). Amazon's antitrust paradox. *Yale Law Journal*, 126(3), 712–805.

Klein, E. (2018). Mark Zuckerberg on Facebook's hardest year, and what comes next. Vox, 2 April. <https://www.vox.com/2018/4/2/17185052/mark-zuckerberg-facebook-interview-fake-news-bots><https://www.vox.com/2018/4/2/17185052/mark-zuckerberg-facebook-interview-fake-news-bots-cambridge>.

Klonick, K. (2019, October 28). Does Facebook's Oversight Board Finally Solve the Problem of Online Speech? *Center for International Governance Innovation*. <https://www.cigionline.org/articles/does-facebooks-oversight-board-finally-solve-problem-online><https://www.cigionline.org/articles/does-facebooks-oversight-board-finally-solve-problem-online-speech/speech/>.

Lessig, L. (1999). *Code and other laws of cyberspace*. New York: Basic Books.

Meta. (2009). Facebook Opens Governance of Service and Policy Process to Users. *Meta Newsroom*. <https://about.fb.com/news/2009/02/facebook-opens-governance-of-service-and-policy-process-to-users/><https://about.fb.com/news/2009/02/facebook-opens-governance-of-service-and-policy-process-to-users/policy-process-to-users/>.

Mueller, M. (2017). *Will the Internet fragment? : Sovereignty, globalization and cyberspace*. Digital futures series.

Oversight Board. (2021a). *Oversight Board Q3 transparency report*. https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjUxdfTja_3AhWvRfEDHQN6CP0QFnoECA0QAQ&url=https%3A%2F%2Foversightboard.com%2Fattach%2F1908707995976431%2F&usq=AOvVaw39mHNY0xZ-Z4A-gT-GiWvk.

Oversight Board. (2021b). The Oversight Board is accepting user appeals to remove content from Facebook and Instagram. <https://oversightboard.com/news/267806285017646-the->

oversight <https://oversightboard.com/news/267806285017646-the-oversight-board-is-accepting-user-appeals-to-remove-content-from-facebook-and-instagram/board-is-accepting-user-appeals-to-remove-content-from-facebook-and-instagram/>.

Oxford Analytica. (2021). Facebook's business model set to withstand exposé, *Expert Briefings*. <https://doi.org/10.1108/OXAN-DB264593>

Pasquale, F. (2015). *The black box society: the secret algorithms that control money and information*. Cambridge (Mass.) London: Harvard University Press.

Pasquale, F. (2018). Tech Platforms and the Knowledge Problem. *American Affairs*, 2(2), 3–16.

Persily, N. (2021). A Proposal for Researcher Access to Platform Data: The Platform Transparency and Accountability Act. *Journal of Online Trust and Safety*, 1(1), 1–6. <https://doi.org/10.54501/jots.v1i1.22>.

La Porte, J. M., & Narbona, J. (2021). Colloquy with Luciano Floridi on the anthropological effects of the digital revolution. *Church, Communication and Culture*, 6(1), 119–138. <https://doi.org/10.1080/23753234.2021.1885984>.

Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC, COM/2020/825 final, published December 15th 2020.

Proposal for a Regulation of the European Parliament and of the Council on contestable and fair Markets in the Digital Sector (Digital Markets Act) COM/2020/842 final, published December 15th 2020.

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

Robertson, A. (2018). Mark Zuckerberg wants to democratize Facebook — here's what happened when he tried. *The Verge*. <https://www.theverge.com/2018/4/5/17176834/mark-zuckerberghttps://www.theverge.com/2018/4/5/17176834/mark-zuckerberg-facebook-democracy-governance-vote-failurefacebook-democracy-governance-vote-failure>.

Rosen, G. (2021). Users Can Now Appeal Content Left Up on Facebook or Instagram to the Oversight Board. *Meta*. <https://about.fb.com/news/2021/04/users-can-now-appeal-content-lefthttps://about.fb.com/news/2021/04/users-can-now-appeal-content-left-up-on-facebook-or-instagram-to-the-oversight-board/up-on-facebook-or-instagram-to-the-oversight-board/>.

Ruscheimer, H. (2021). Re-Subjecting State-Like Actors to the State. In Richter, H., Straub, M., & Tuchteld, E. (Eds.). *Break Up or Regulate Big Tech? Avenues to Constrain Private Power in the DSA/DMA Package*, 49–54. Max Planck Institute for Innovation and Competition Research Paper, 21-25.

Scott, M. (2022). Russia bans Facebook. *Politico*, 4 March. <https://www.politico.eu/article/russiabans-facebook/>.

Solove, D. J. (2020). The Myth of the Privacy Paradox. *SSRN Electronic Journal*, 89(1), 1–51. <https://doi.org/10.2139/ssrn.3536265>.

Solum, L. B. (2008). Models of Internet Governance. *University of Illinois Public Law Research Paper*, 07.

Suzor, N., Van Geelen, T., & Myers West, S. (2018). Evaluating the legitimacy of platform governance: A review of research and a shared research agenda. *International Communication Gazette*, 80(4), 385–400. <https://doi.org/10.1177/1748048518757142>.

Troper, M. (2013). Separation of powers, translated by Philip Stewart, in Volpilhac-Augier, C. (ed). *A Montesquieu Dictionary*. ENS Lyon. <http://dictionnaire-montesquieu.ens-lyon.fr/en/article/1376427308/en>.

Tufekci, Z. (2012). We were always human. In Wesch, M., & Whitehead, N. L. (Eds.). *Human No More: Digital Subjectivities, Unhuman Subjects, and the end of Anthropology*, 33–47. Tunis Agenda for the Information Society, World Summit on the Information Society, Nov. 18, 2005, WSIS-05/TUNIS/DOC/6(Rev. 1)-E.

Tworek, H. (2019, October 28). Social Media Councils. Center for International Governance Innovation. <https://www.cigionline.org/articles/social-media-councils/>

Ulyot, T. (2009). Results of the Inaugural Facebook Site Governance Vote. <https://web.archive.org/web/20090430215524/http://blog.facebook.com/blog.php?post=79146552130>.

Van Dijck, J. (2013). *The culture of connectivity: A critical history of social media*. Oxford: Oxford University Press.

Wu, T. (2010). Is Internet exceptionalism dead? In Szoka, B., & Marcus, A. (Eds.). *The Next Digital Decade: Essays on the Future of the Internet*, 179–188.

Wu, T. (2018). *The curse of bigness: Antitrust in the new gilded age*. New York, NY: Columbia Global Reports.

Zuboff, S. (2019). *The Age of Surveillance Capitalism*. Public Affairs.

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A first publication of its kind, this student contribution, was written as part of the course "**Comparative approaches to Big Tech Regulation**" taught by Professor **Florence G'sell** in the spring semester.

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